

REMARKS

The drawings have been rejected to because reference for numeral 12 does not appear. Applicant submits a new copy of Figure 5 with the reference numeral 12 added thereto. No other changes have been made to the drawings. Applicant respectfully requests that the revised Figure 5 be entered.

Claims 18 and 19 have been objected to due to claim terminology. Applicant has amended claim 18 to change "removable" to -removably- as suggested by the Examiner. Claim 17 has also been amended to provide proper antecedent support for the use and transport positions referenced in claims 18 and 19, which depend from claim 17. Accordingly, the objections have been overcome by the amendment to claims 17 and 18.

Claims 1, 9, 11 and 12 have been rejected to under 35 U.S.C. §102 as being anticipated by the Boxrud patent 3,331,249. Claims 2, 7, 14, 17-19, 22, 23, and 25 have been rejected to under §103 as being obvious over Boxrud in combination with Little. Claims 3-6, 8, 10, 13, 15, 16, 20, 21, and 24 have been deemed allowable. Applicant respectfully requests reconsideration of the rejected claims.

Claim 1 requires "a plurality of soil probes extending radially outwardly from the perimeter for collecting soil samples." While the Examiner asserts that the '249 Boxrud patent discloses a plurality of soil probes 30 and 35, this interpretation of Boxrud is incorrect. Element 30 of Boxrud is a probe to collect a soil sample. However, elements 35 are merely lugs which do not collect soil samples. Therefore, Boxrud has a single soil probe, rather than the plurality of probes as required by claim 1.

Claim 1 further provides that each probe have "an outer end for receiving and discharging the soil sample." This limitation derives from cancelled claim 12. Even if the Boxrud '249 soil

sampling device is modified to include a plurality of probes, as shown in the Boxrud patent 3,264,877, this limitation of claim 1 is not satisfied, since the probes of the Boxrud patents receive a soil sample in the outer end and discharge the sample through the inner end into the chamber of the wheel.

Therefore, claim 1 as originally filed distinguishes over the Boxrud '249 patent, and as amended, distinguishes over the combination of the Boxrud '249 and '877 patents.

Claims 2-11 and 13 depend from claim 1 and should be allowable as depending from an allowable base claim.

Independent claim 14 is directed towards a soil probe comprising a wheel with at least one probe extending outwardly from the wheel with an outer end adapted to receive a soil sample. Claim 14 further requires "a plunger rod mounted in the wheel for movement between a retracted position adjacent the inner end of the probe and an extended position adjacent the outer end of the probe to discharge the soil sample from the outer end of the probe." The Examiner acknowledges that the Boxrud '249 patent does not have such a plunger, but cites the Little patent to overcome this deficiency of Boxrud. However, there is no motivation to combine the plungers of the Little patent with the Boxrud patent. The plungers of Little expel the soil sample outwardly through the outer ends of the probes. In comparison, Boxrud discharges the soil samples through the inner end of the probe for collection within the chamber 29 in the wheel. There is no reason to discharge the samples out of the outer end of the Boxrud probe, particularly since there is nothing to catch a sample discharged from the outer end of the probe. As the Federal Circuit has explained, it is not obvious to modify a reference in a manner inconsistent with its teachings. *In re Gorden*, 733 F.2nd 900, 902(Fed. Cir. 1984).

The Federal Circuit has also explained that there must be "some objective teaching" leading to the combination. *In re Fitch*, 972 F.2nd 1260, 1265(Fed. Cir. 1992). As further explained in *In re Dembiczak*, 175 F 3rd 994, 999(Fed. Cir. 1999), this showing must be "clear and particular." Here, the Examiner has provided no clear and particular objective teaching leading to the combination of Boxrud and Little. Therefore, the §103 obviousness rejection of the claims should be withdrawn.

Accordingly, claim 14 distinguishes over the cited references so as to be in proper form for allowance. Claims 15-21 depend from claim 14, and should be allowable as depending from an allowable base claim.

Independent method claim 22 is directed towards a method of obtaining a soil sample by rotating a wheel with a probe which collects a soil sample through an outer end of the probe, and "extending a plunger rod into an inner end of the probe so as to discharge a soil sample through the outer end of the probe." As discussed above with respect to claim 14, there is no motivation to combine the Little patent with the Boxrud '249 patent, nor is there any clear, subjective teaching to do so, as required by the Federal Circuit. Therefore, claim 22, along with dependent claims 23-25, distinguish over the cited references so as to be in proper form for allowance.

In view of the foregoing, Applicant respectfully requests that a notice of allowance be issued.

No fees or extensions of time are believed to be due in connection with this amendment;
however, consider this a request for any extension inadvertently omitted, and charge any
additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



KIRK M. HARTUNG, Reg. No. 31,021
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 22885

Attorneys of Record

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